

OFFICE OF THE CLERK
**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Robert H. Jackson
United States Courthouse
2 Niagara Square
Buffalo, New York 14202
Phone: 716-551-1700
Fax: 716-551-1705

MARY C. LOEWENGUTH
CLERK OF COURT

PATRICK J. HEALY
CHIEF DEPUTY CLERK

Kenneth B. Keating
Federal Building
100 State Street, Rm 6070
Rochester, New York 14614
Phone: 585-613-4000
Fax: 585-613-4035

November 8, 2021

Brian A. Goldstein
Cellino Law LLP
2500 Main Place Tower
350 Main Street
Buffalo, NY 14202

Merck, Sharp & Dohme Corporation
C/O CT Corporation System
155 Federal St.
Boston, MA 02110

In re: Colby v. Merck Sharp & Dohme Corp. (Case No.: 6:13-cv-06040)

Dear Sir/Madam:

I have been advised by Judge Charles J. Siragusa who presided over the above-referenced action, that it has been brought to his attention that during the time the case was assigned to him, he or his spouse owned stock in Merck & Co. Inc. This stock ownership would have required recusal under the Code of Conduct for United States Judges. Although no decision was made by Judge Siragusa in connection with this case as the matter was transferred pursuant to a Multidistrict Litigation Conditional Transfer Order almost immediately after it was opened, Judge Siragusa has directed that I notify the parties of this conflict.

Advisory Opinion 71, from the Judicial Conference Codes of Conduct Committee, provides the following guidance for addressing disqualification that is not discovered until after a judge has participated in a case:

[A] judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision.

Although Advisory Opinion 71 contemplated disqualification after a Court of Appeals oral argument, the Committee explained “[s]imilar considerations would apply when a judgment was entered in a district court by a judge and it is later learned that the judge was disqualified.”

November 8, 2021

Page 2

With Advisory Opinion 71 in mind, you are invited to respond to Judge Siragusa's disclosure of a conflict in this case. Should you wish to respond, please submit your response directly to me on or before November 29, 2021. Any response will be considered by another judge of this court without the participation of Judge Siragusa.

Very truly yours,



Mary C. Loewenguth
Clerk of Court